

TITLE XXIX.

Proceedings in County Courts.

CHAPTER 310.

PROBATE OF WILLS.

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310.01 Wills in judge's keeping. Every county judge who has a will in his possession shall open it and announce his possession thereof in open court on the first session thereof after he shall have notice of the testator's death; and shall give notice of his possession to the executor therein named, if any, otherwise to some person interested in the provisions thereof. If probate jurisdiction belongs to any other court such will shall be delivered to the executor or such other court.

310.02 Delivery of will to court; duty of executor. (1) Every person, other than the executor, having the custody of any will shall, within thirty days after he has knowledge of the death of the testator, deliver the same into the proper county court or to the person named as executor therein. Every person named as executor shall, within thirty days after he has knowledge that he is named executor, and has knowledge of the death of the testator, present such will to the county court which has jurisdiction of the probate thereof, unless the will has been otherwise deposited with the court.

(2) Every person who shall neglect to perform any of the duties required in this section, without reasonable cause, shall be liable to each and every person interested in such will for all damages caused by such neglect.

310.03 Liability for neglect. If any person having the custody of any will after the death of the testator shall, without reasonable cause, neglect to deliver the same to the county court having jurisdiction thereof, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county by warrant issued by such court and there be kept in close confinement until he shall deliver the will as required.

310.04 Notice of proving will. When a petition for the probate of a will is presented, the county court shall appoint a time and place for proving the will; and notice of the hearing shall be given as provided in section 324.18.

Cross Reference: Orders signed by register in probate, see 253.27.

310.045 Petition to county court. All applications to county courts shall be made by verified petition. All petitions must show the jurisdiction of the court, and the interest of the petitioner, and his right to apply to the court. The petition for probate of a will or for administration shall state the names and residences of the surviving spouse and heirs of the decedent and of the legatees and devisees, so far as known, or can, with reasonable diligence, be ascertained; and who are minors or otherwise under disability, and the names and residences of their guardians in this state.

310.05 Immediate hearing. (1) **WAIVER OF NOTICE.** Upon making application for the probate of a will or for letters of administration, if all parties interested enter their appearance in writing, waive the notice required in sections 310.04 and 311.03, and consent to

an immediate hearing, letters testamentary or of administration may be granted as if notice had been given.

(2) **NONRESIDENT HEIR, LEGATEE; NOTICE OF FOREIGN CONSUL.** If the application for letters testamentary or of administration shall show or if it shall subsequently appear that any heir, devisee or legatee is a resident of a foreign country, the court shall cause the notice of hearing of such application or of such subsequent proceeding as may then be pending to be given to a consul, vice consul or consular agent of such foreign country by mailing a copy of the notice in a sealed envelope, the postage prepaid, addressed to such consul, vice consul or consular agent at his post-office address, at least 20 days previous to the day appointed for hearing. If it shall be shown to the court that there is no such consul, vice consul or consular agent of such foreign country, the court may direct that such notice be so mailed to the public administrator. The notice required by this subsection is not jurisdictional.

310.06 Proof of uncontested will. If no person shall contest the probate of a will the court may grant probate thereof on the testimony of one of the subscribing witnesses, if such witness shall testify that such will was executed in all particulars as required by the statutes and that the testator was of sound mind at the time of the execution thereof. If no competent subscribing witness resides in this state at the time fixed for proving the will or if none of them, after due diligence used, can be found in this state, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will and may admit proof of his handwriting and that of the subscribing witnesses.

310.07 Foreign wills; domestic probate, effect. Any will admitted to probate without this state and in the place of the testator's domicile may be admitted to probate and recorded in this state. When a copy of any such will and the judgment admitting it to probate duly authenticated, shall be produced by the executor or other person interested therein to the county court, such court shall appoint a time and place of hearing, and cause notice thereof to be given as required by section 310.04. If on the hearing it shall appear to the court that the order or decree admitting such will to probate was made by a court of competent jurisdiction and is still in force, the copy and the probate thereof shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in this state and the subsequent proceeding may be the same.

310.08 Foreign will; original probate. Where a decedent died domiciled in another state and the will of said decedent disposes of real estate in this state, any county court of a county in which any of such real estate is located, may admit said will to probate. Notice to creditors and to public administrator and department of taxation shall be given as in the case of wills of decedents domiciled in Wisconsin at time of death and an executor or administrator may be appointed.

310.09 Will executed in enemy country during war time. Whenever, after a declaration of war between the United States and a foreign state or country, a copy of a will executed in such foreign state or country, by a resident thereof, purporting to be authenticated by a court of such foreign state or country, and containing a bequest, legacy or devise of property within this state in favor of a citizen of the United States, shall be produced by the executor or other person interested therein to the county court, with or without a copy of the record admitting the same to probate, such court shall appoint a time and place of hearing, and cause notice thereof to be given as required by section 310.04. If on such hearing, had before the expiration of three months after the declaration of peace following upon such war, it shall appear to the satisfaction of the court that such will is genuine, the same may be admitted to probate, and the same, with the order so admitting the same, shall be filed and recorded, and such will shall then have the same force and effect as if it had been originally proved and allowed by said court.

310.10 Lost will, how proved. Whenever any will of real or personal estate shall be lost or destroyed by accident or design the county court shall have power to take proof of the execution and validity of such will and to establish the same. The petition for the probate of such will shall set forth the provisions thereof. The circuit court shall have the same power in an action brought for that purpose.

310.11 Construction of will, notice. The notice of hearing upon a petition for the construction of a will shall be given as provided in section 324.18.

310.12 Letters testamentary. When a will shall have been admitted to probate the court shall issue letters testamentary thereon to the person named executor therein, if he is legally competent, accepts the trust, and gives bond when and as required by law.

[310.13 Stats. 1933 renumbered section 310.07 by 1935 c. 176]

310.14 Executor's bond; separate bonds. (1) Every executor, before he shall enter upon the execution of his trust and before letters testamentary shall issue, shall give a bond to the judge of the county court in such sum as he may direct, with one or more sureties, with conditions as follows:

(a) To make and return to the county court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits and estate of the deceased, whether disposed of by the will or not, which shall come to his possession or knowledge or to the possession of any other person for him;

(b) To administer, according to law and the will of the testator, all his goods, chattels, rights, credits and estate which shall at any time come to his possession or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies and charges chargeable on the same or such dividends thereon as shall be ordered and adjudged by the county court;

(c) To render a true and just account of his administration to the county court within one year and at any other time when required by such court;

(d) To perform all orders and judgments of the county court.

(2) When two or more persons shall be appointed executors of any will the county court may take a separate bond from each, with sureties, or a joint bond from all, with sureties.

310.15 County courts; executor's bond. If the executor shall be sole or residuary legatee instead of the bond prescribed in section 310.14 he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator. An executor named in any will may be exempt from giving bond, when the testator has so ordered or requested in his will, unless the county court shall order otherwise; and such court may require a bond, with sureties, of any such executor at any time pending the settlement of the estate.

310.16 Administration on failure of executor to qualify. If an executor refuses to accept the trust or for twenty days after the probate of the will, neglects to give bond as required, the court may grant letters testamentary to the other executors named, who are capable and will accept the trust and give bond. If all named executors neglect to qualify, if no executor is named or if those named are not legally competent, the court shall grant administration of the estate, with the will annexed, as provided in sections 311.02 and 311.03.

310.17 Minor named as executor. When the person named executor is a minor at the time of proving the will, administration shall be granted with the will annexed, during his minority, unless there is another executor named who accepts the trust and gives bond; and in such case the executor who shall have letters testamentary shall administer the estate until the minor becomes twenty-one years of age, when he may be admitted as joint executor on giving the requisite bond.

310.18 Bond and duty of administrator with will annexed. Every person who shall be appointed administrator with the will annexed shall, before entering upon the execution of the trust, give bond to the judge of the county court in the same manner and with the same conditions as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

310.19 Power of executor who acts, and of administrator with will annexed. When all the executors appointed in any will shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose as if all were authorized and should act together; and administrators with the will annexed shall have the same authority to perform every act and discharge every trust as the executors named in the will would have had, and their acts shall be as valid and effectual for every purpose.

310.20 Executors; vacancies, resignations, administrations de bonis non. (1) When an executor or administrator shall die, or his authority shall be otherwise terminated, the remaining executor or administrator may execute the trust; if there shall be no other executor or administrator the court shall grant administration of the estate not already administered. The court may accept the written resignation of any administrator or executor.

(2) Whenever an administrator de bonis non is appointed the court shall cite him and his predecessor or the latter's personal representative to appear at a stated time and place to settle the predecessor's account; upon such settlement the property of the estate shall be paid and delivered to the new administrator.

310.21 Service on nonresident executor or administrator. When it shall be necessary to serve upon an executor or administrator any order, notice or process of the county court, and service cannot be made in this state, such service may be made by publication, or personally without the state, in the same manner and with the same effect as is provided for the service of summons upon nonresident defendants in an action in the circuit court.

[310.22 Stats. 1931 renumbered section 324.35 by Supreme Court Order, effective Jan. 1, 1934]

[310.23 Stats. 1931 renumbered section 310.20 by Supreme Court Order, effective Jan. 1, 1934]

[310.24 Stats. 1931 renumbered section 370.01 (45) by 1933 c. 190 s. 2]

310.25 Selection of attorney to represent estate. Whenever a firm or corporation of any kind is named as administrator or executor of an estate, he or she who is nearest of kin and who receives any interest in the estate, and if there be no bequest of any kind, then the party receiving the largest amount or interest from the estate, shall name the attorney who shall represent the estate in all proceedings of any kind or nature, unless good cause be shown before the court why this should not be done. In case of equal division in number of kin or persons having the largest and similar interest, then said executor or administrator shall select one of those named; otherwise, the majority shall govern. In case of infants; people insane or otherwise incapacitated, the natural guardian shall act in behalf of the infant; and in case of no natural guardian the guardian created by the court shall govern the selection.